

The Honorable Ronald B. Leighton

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WASHINGTON
AT TACOMA

TRACY AYNES,

Plaintiff,

v.

KELLOGG SALES COMPANY,

Defendants.

Case No. C07-05623 RBL

DECLARATION OF LEIGH ANN
COLLINGS TIFT IN SUPPORT OF
DEFENDANT KELLOGG'S
OPPOSITION TO MOTION TO
COMPEL

I, Leigh Ann Collings Tift, hereby declare as follows:

1. I am one of the attorneys representing Kellogg Sales Company ("Kellogg"), in the above-captioned matter, I have personal knowledge of the matters related herein.

2. On September 9, 2008, Plaintiff Tracy Aynes was deposed. I represented Defendant, Kellogg at the deposition. Ms. Aynes was represented by Ms. Sargent. Attached as **Exhibit 1** are true and correct pages of the transcript of the video taped deposition of Ms. Aynes: 36, 44, 113-117.

3. Among the numerous documents that were produced to Plaintiff in discovery were copies of "score cards" for employees in Kellogg's Western Region. Attached as Exhibit 2 is an example of a score card. The information it contains relates to sales performance, and does

**DECL. OF LEIGH ANN TIFT
ISO DEF KELLOGG'S OPP. TO
MTN TO COMPEL
(C07-5623 RBL)**

LITTLER MENDELSON, P.C.
One Union Square
600 University St., Suite 3200
Seattle, WA 98101
Phone: 206.623.3300

1 not reflect other aspects of an employee's work performance. Until recently, Plaintiff's counsel
 2 agreed to limit production of the score cards to Kellogg's Western Region (the only group
 3 against whose performance Plaintiff was measured). However, Plaintiff's counsel suddenly
 4 changed her mind. Plaintiff's counsel did not explain why her belief regarding relevance and the
 5 proper scope of discovery has changed until this motion was filed, and then it was stated that
 6 there was an intention to show Plaintiff was "exceptional" relative to the Snacks Division
 7 nationwide. Plaintiff's sales performance has never been contested as anything other than good,
 8 as even she conceded at her deposition.

9 4. Attached as Exhibit 3 to this Declaration is Kellogg's Fifth Supplemental
 10 Responses to Discovery. In making this final supplementation, Kellogg completed its production
 11 of all EEO-1 reports, identified all Kellogg Zone Managers, and produced complaints of
 12 discrimination and harassment for the Western Region. None of these requests were ever
 13 opposed by Kellogg, as the correspondence attached to Ms. Sargent's Declaration reflects. It is
 14 unfortunate that these last items took so long, but, in fairness, Kellogg produced 60,000 pages of
 15 information, both in paper copy and electronically, and had numerous discussions with Plaintiff's
 16 counsel related to these requests.

17 5. To my knowledge, Plaintiff's counsel has never raised any concerns with the
 18 "completeness" of Kellogg's answer to RFP 14. As characterized in this motion, the Request is
 19 materially overbroad. Plaintiff is well aware that Regional Managers frequently meet with
 20 subordinates for events as common as walking through stores where Kellogg's products are sold.
 21 While this is an "employee performance issue," these casual reviews are not an issue in this case,
 22 and it would be very burdensome for Kellogg to have to search its files for any record of any
 23 conversation related to "performance" by subordinate employees—particularly where, as here,
 24 these informal conversations at the stores were not an issue for Plaintiff. Instead, the
 25 performance concerns related Plaintiff that led to her termination were documented in formal

26 **DECL. OF LEIGH ANN TIFT**
ISO DEF KELLOGG'S OPP. TO
MTN TO COMPEL
 (C07-5623 RBL)

1 disciplinary memos. Kellogg has, for the record, searched for all documents that evidence like
2 discipline by the Regional Managers.

3 6.. Plaintiff's counsel has not conferred with Defendants in regard to a demand for
4 "demographic" information related to females in the Snacks Division, and that is not a discovery
5 request in any event. Likewise, Plaintiff's counsel has never spoken to anyone about her
6 concerns about contacting Plaintiff's current employer. Plaintiff's performance at her current
7 job, her earnings and her earning potential are certainly relevant to her claims in this case.

8 7. With respect to the location of the depositions of out of state witnesses, Kellogg's
9 counsel has attempted to explain to Plaintiff that the non-resident managers do travel
10 occasionally (not regularly) to Washington, but they do so for a specific business purpose. What
11 counsel really intends is that the non-resident employees remain in Washington so that they can
12 be deposed. Again, Plaintiff's demand to delay business travel for her convenience has not been
13 the express subject of discussions (and counsel for Kellogg notes that nowhere in any
14 correspondence has Kellogg ever agreed to do this, despite counsel's opinion to the contrary).
15 Kellogg has offered to stipulate to video depositions of these managers, and that is a solution
16 both cheaper and more appropriate than delaying non-resident managers from scheduled business
17 appointments.

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26 **DECL. OF LEIGH ANN TIFT**
ISO DEF KELLOGG'S OPP. TO
MTN TO COMPEL
(C07-5623 RBL)

1 I declare that the above statements are true to the best of my knowledge and belief,
2 and that I understand that it is made for use as evidence in court and is subject to penalty
3 for perjury.

4 September 22, 2008.

5
6 s/Leigh Ann Collings Tift
7 Leigh Ann Collings Tift, WSBA #11776
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17 Attorneys for Defendant
18 KELLOGG SALES COMPANY
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26 **DECL. OF LEIGH ANN TIFT**
ISO DEF KELLOGG'S OPP. TO
MTN TO COMPEL
(C07-5623 RBL)

CERTIFICATE OF SERVICE

I am a resident of the State of Washington, over the age of eighteen years, and not a party to the within action. My business address is 600 University Street, Suite 3200, Seattle, WA 98101. On September 22, 2008, I electronically filed the:

**DECLARATION OF LEIGH ANN COLLINGS TIFT IN SUPPORT OF
DEFENDANT KELLOGG'S OPPOSITION TO MOTION TO COMPEL**

with the Clerk of the Court using the CM/ECF system which will send notification of such filing The Honorable Ronald B. Leighton and to the following:

Clayton Ernest Longacre
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I declare under penalty of perjury under the laws of the State of Washington that the above is true and correct. Executed on September 22, 2008, at Seattle, Washington.

/s/ Savanna L. Stevens
Savanna L. Stevens
sstevens@littler.com

**DECL. OF LEIGH ANN TIFT
ISO DEF KELLOGG'S OPP. TO
MTN TO COMPEL
(C07-5623 RBL)**

LITTLER MENDELSON, P.C.
One Union Square
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EXHIBIT 1

VIDEOTAPED DEPOSITION OF TRACY AYNES, 9/9/08

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WASHINGTON
AT TACOMA

TRACY AYNES,)	
)	
Plaintiff,)	
)	
v.)	No. C07-05623 RBL
)	
KELLOGG SALES COMPANY,)	
)	
Defendants.)	
)	

VIDEOTAPED DEPOSITION UPON ORAL EXAMINATION OF
TRACY AYNES

Tuesday, September 9, 2008
9:00 a.m.
600 University Street, Suite 3200
Seattle, Washington

Reported by Marlis J. DeJongh, CCR, RPR

Lic. No. DE-JO-NM-J498K9

MARLIS J. DeJONGH & ASSOCIATES
206-583-8711

VIDEOTAPED DEPOSITION OF TRACY AYNES, 9/9/08

Page 36

1 A. The gist of it basically is, you know, regardless
2 of whether or not the activity is happening, we need to
3 capture the volume, you know, make it happen.

4 Q. That's true, isn't it?

5 A. I guess so.

6 Q. So after this management team was replaced who was
7 your direct supervisor?

8 A. That would be Angelo Chiazza. Scott O'Hare also
9 above him.

10 Q. And who was your immediate supervisor?

11 A. Angelo Chiazza.

12 Q. Who was Roland Carey?

13 A. Roland Carey hired on later. They added a new
14 layer of management between the director and he was an
15 associate director.

16 Q. Now when Dean Allen was your supervisor did you
17 feel that you were successful?

18 A. I was successful.

19 Q. No problems?

20 A. I didn't have any problems with my success while I
21 worked with Dean Allen.

22 Q. Did you have any problems with anything?

23 A. There would be all the problems that we were
24 resolving in the zone.

25 Q. And what were the problems that were being resolved

VIDEOTAPED DEPOSITION OF TRACY AYNES, 9/9/08

Page 44

1 of the activity.

2 With a customer like Winco it's particularly important
3 because of their velocity. And they sell in pallet
4 quantities, so if you don't forecast properly you will not
5 have the product to sell during their ad. So just, again,
6 communication.

7 Q. And did you criticize Darwin Chaffin?

8 A. I have spoke with all of them and their supervisors
9 and mine.

10 Q. And did you criticize Steve Freeman?

11 A. I have spoke with him and his supervisors and mine.

12 Q. And when you say you spoke with his supervisors,
13 did you speak directly to them or did you insist on
14 including your management chain as well?

15 A. Generally copying your manager on what's happening
16 in the trade is required. Just like you're responsible for
17 your zone's volume, they're responsible for the entire west,
18 and if something is going awry and you're not making them
19 aware of it, that's a very big problem.

20 (Exhibit No. 3 marked for identification.)

21 Q. Ms. Aynes, you have been handed a document which
22 has been marked exhibit No. 3. Do you recognize this?

23 A. Yes.

24 Q. And this is an e-mail chain beginning the end of
25 July and carrying through to August of 2005, correct?

VIDEOTAPED DEPOSITION OF TRACY AYNES, 9/9/08

Page 113

1 Ms. Aynes, you've been handed a document which is marked
2 Exhibit 18. Would you take a minute and look at this.

3 A. (Witness reviewing document.)

4 Okay.

5 Q. Do you remember receiving this?

6 A. I can't say that I do.

7 Q. Did you know that your unsaleable rate made the
8 Pacific Northwest the worst zone in the country?

9 A. Yes, I looked at it.

10 Q. And Mr. Chiazza writes, These results can only mean
11 one of two things. Either you directed your zone to ignore
12 the region direction so the Pacific Northwest could achieve
13 budget in 2005, or your follow-up to make sure the execution
14 was being implemented did not happen.

15 Do you see that?

16 A. Yes.

17 Q. He goes on to write, This performance is not
18 acceptable and cannot continue.

19 Now you knew you had a problem with unsaleable rates in
20 the Pacific Northwest zone, correct?

21 A. Yes.

22 Q. And in regard to your work performance, certainly
23 you knew that there were some things you were doing that
24 were good, very good. And what things were you doing well
25 in the Pacific Northwest zone by the spring of 2006?

1 A. In regards to unsaleables specifically or just in
2 general?

3 Well, we were achieving our sales budgets for the most
4 part, and we had resolved a lot of internal HR issues and
5 staffing and training. And even as far as unsaleables,
6 where those stand, the improvements year over year were at
7 the top in the nation also from what they had been
8 previously. So even though they were not ideal yet, they
9 were well on their way.

10 Q. Now in terms of sales budgets, you were actually
11 complimented on how well you did in achieving sales in your
12 zone, correct?

13 A. Yeah.

14 Q. You were recognized and fairly recognized for your
15 sales?

16 A. Yes.

17 Q. And in terms of your personnel matters and staffing
18 and training, those had been called to your attention at the
19 end of 2005 in your performance evaluation, correct?

20 A. I'm not sure what you mean about that, called to my
21 attention.

22 Q. Well, while it's true that your sales budgets and
23 your sales and driving sales in the Pacific Northwest zone,
24 it had been called to your attention that your performance
25 in regard to people skills, the way you communicated with

VIDEOTAPED DEPOSITION OF TRACY AYNES, 9/9/08

Page 115

1 people were not good, correct?

2 A. Correct.

3 Q. And you knew about the unsaleables?

4 A. Yes.

5 (Exhibit No. 19 marked for identification.)

6 Q. Ms. Aynes, I've handed you a document which is
7 marked as Exhibit 19. Do you recognize this?

8 A. Yes.

9 Q. And tell me what this is.

10 A. It's a performance management, PMP.

11 Q. And it indicates that your manager is Roland Carey
12 at the time this was delivered?

13 A. At the time it was delivered.

14 Q. Do you know when it was delivered?

15 A. Yes. In March.

16 Q. And Mr. Carey points out in the middle box where it
17 says, Strengthen core organizational capabilities, create an
18 environment that engages cross-functional, cross-regional
19 and cross-business that eliminates duplicity, conduct org
20 reviews, support utilization of shared services, and so on.
21 And he writes that this is not accomplished.

22 You have a good relationship with the DC team but the
23 cross-relationship effectiveness stops there. Major issues
24 with the working relationships with the account team, region
25 team, MTS managers and Kroger team. You blame others for

1 problems while deflecting responsibility from yourself. You
2 have a hard time dealing with the gray areas of our business
3 and have developed a we-against-them attitude. You have
4 openly berated and talked down to account team according to
5 the feedback and observations from other managers and
6 myself. I felt you did not fully embrace our conflict
7 management seminar held in 2005 in Seattle with the account
8 team and this, this has led to continued problems. This
9 area must be improved immediately and corrected in 2006.

10 You knew that he was unhappy with your performance at
11 the end of 2005, correct?

12 A. Yes.

13 Q. And continuing on, better manage our cash, that
14 thing, he also mentions that there are two things not
15 accomplished under here, Pacific Northwest productivity for
16 2005 was minus 1.1 percent. Minus 1.10 percent, correct?

17 A. Yeah. I'm not sure what that's in relation, how
18 that's tabulated, because we were underspent on our budget,
19 which is good for variable labor, so I'm not sure what that
20 ties to there.

21 Q. And then the other thing that's not accomplished
22 here is unsaleable actual, and you knew about that too. The
23 final line in the right-hand column.

24 A. Yes.

25 Q. So it would not be fair to say that you got a

1 sterling performance evaluation at the end of 2005 now,
2 would it?

3 A. No.

4 Q. There were criticisms of your work performance?

5 A. Yes.

6 Q. In May of 2005 you received a 45-day performance
7 improvement plan, correct?

8 A. Uh-huh.

9 (Exhibit No. 20 marked for identification.)

10 Q. And in this document you were told that your work
11 performance has not been at an acceptable level, correct?

12 A. Correct.

13 Q. And did they explain to you what it was that they
14 felt was -- Roland I'm speaking of, and Angelo, did they
15 explain what it was that was not sufficient in terms of your
16 performance?

17 A. Yes.

18 Q. What did you hear them say?

19 A. What is bulleted here.

20 Q. Okay. So you understood them to be telling you
21 that your communications with Kellogg's employees have been
22 abrasive and accusatory?

23 A. Yes.

24 Q. And when they told you that, what did you say?

25 A. I don't recall everything that was said at the

EXHIBIT 2



Western									
	Mar	Mar	B/(W)	Mar QTD	B/(W)	Mar QTD	B/(W)	% ACMP	
	Actual	Budget		Actual	Budget	Actual	Budget		
Cases	2,937	2,948	(11)	6,963	7,381	6,963	7,381		
Gross Sales	76,653	74,343	2,310	183,758	188,307	183,758	188,307		(418)
Unsaleable Returns	739	699	(40)	1,840	1,750	1,840	1,750		(4,549)
Adjusted Gross Sales	75,914	73,643	2,271	181,918	186,556	181,918	186,556	97.514%	(90)
COGS (Cost of Production)	23,865	22,961	(903)	56,934	58,318	56,934	58,318		(4,638)
Sales Margin	52,049	50,682	1,367	124,984	128,238	124,984	128,238	97.462%	(3,255)
Distribution Overhead	4,972	4,790	(181)	13,343	13,014	13,343	13,014		(329)
Sales Force Overhead - Fixed	3,688	3,712	24	9,868	10,034	9,868	10,034		166
Sales Force Overhead - Variable	4,077	4,049	(28)	9,987	10,413	9,987	10,413		426
VAP - POP	239	139	(100)	616	463	616	463		(153)
Total POP, SF, and Distribution	12,975	12,690	(285)	33,813	33,923	33,813	33,923		110
Sales Contribution	39,074	37,992	1,082	91,171	94,315	91,171	94,315	96.666%	(3,145)
Unsaleable	0.964%	0.941%	(0.023)%	1.001%	0.930%	1.001%	0.930%		(0.072)%
POP	0.312%	0.187%	(0.125)%	0.335%	0.246%	0.335%	0.246%		(0.089)%
Salesforce Overhead - Variable	5.319%	5.446%	0.127%	5.435%	5.530%	5.435%	5.530%		0.095%
Distribution Overhead	6.486%	6.444%	(0.042)%	7.261%	6.911%	7.261%	6.911%		(0.350)%
Total Sales Contribution %	51.471%	51.589%	(0.118)%	50.116%	50.556%	50.116%	50.556%		(0.440)%

CONFIDENTIAL
KELLOGG 04139

EXHIBIT 3

FILE

The Honorable Ronald B. Leighton

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WASHINGTON
AT TACOMA

TRACY AYNES,

Plaintiff,

v.

KELLOGG SALES COMPANY,

Defendants.

Case No. C07-05623 RBL

**DEFENDANT'S FIFTH
SUPPLEMENTAL RESPONSES TO**

**PLAINTIFF AYNES'S FIRST SET OF
DISCOVERY REQUESTS TO
DEFENDANT**

Defendant KELLOGG SALES COMPANY ("Kellogg") provides the following
supplemental responses to Plaintiff Aynes First Set of Discovery Requests to Defendant:

GENERAL DISCOVERY OBJECTIONS

Defendants reiterate and incorporate the General Objections previously stated in

Kellogg's previous responses to Plaintiff's discovery requests.

DISCOVERY REQUESTS

INTERROGATORY NO. 7: Identify all of your Zone Managers in Kellogg's Snacks
Division in the past ten (10) years, including in your answer the names of each, their dates of
employment, the area in which they worked, their gender, whether they remain employed as a

**DEF'S FIFTH SUPP RESP TO PLTF'S FIRST SET OF DISCOVERY
REQUESTS**

CASE NO. C07-05623 RBL
FIRMWIDE:86671696.1 047719.1009

LITTLER MENDELSON, P.C.
Columbia Center
701 Fifth Avenue, Suite 6500
Seattle, WA 98104.7097
206.623.3300

86672102

1 Zone Manager with Kellogg's Snacks Division, and if not, the reason they are no longer
2 employed as a Zone Manager.

3 **RESPONSE:** Defendant objects that the interrogatory is vague, ambiguous, overbroad
4 and unduly invasive of the privacy interests of employees and former employees who are not
5 parties to this litigation. Without waiving these objections, see KELLOGG 00408 to 00414.

6 **SECOND SUPPLEMENTAL RESPONSE:** Without waiving the foregoing objections,
7 see documents attached as KELLOGG 04132-04138.

8 **FIFTH SUPPLEMENTAL RESPONSE:** Without waiving the foregoing objections,
9 see documents attached as KELLOGG 57288.

10
11 **REQUEST FOR PRODUCTION NO. 18:** Produce all documents reflecting or relating
12 to any complaints, allegations or observations of discrimination or harassment concerning
13 Kellogg employees during the past ten years. Include any and all internal complaints, documents
14 filed with or received from the EEOC or Human Rights Commissions, and the complaints in any
15 lawsuits.

16 **RESPONSE:** Defendant objects that the interrogatory is vague, ambiguous, overbroad
17 and unduly invasive of the privacy interests of employees and former employees who are not
18 parties to this litigation. Subject to and without waiving the foregoing objections, defendant will
19 produce documents sufficient to respond to this Request for the Western Region, Snack Division
20 upon the entry of an appropriate protective order.

21 **FOURTH SUPPLEMENTAL RESPONSE:** Without waiving the foregoing
22 objections, and in supplementation to the above, defendant will produce (1) complaints in
23 lawsuits and (2) EEOC and/or Human Rights Commission charges containing allegations of
24 harassment or discrimination for the Western Region, Snack Division.

25
26 **DEF'S FIFTH SUPP RESP TO PLTF'S FIRST SET OF DISCOVERY
REQUESTS**

CASE NO. C07-05623 RBL
FIRMWIDE:86671696.1 047719.1009

1 **FIFTH SUPPLEMENTAL RESPONSE:** Without waiving the foregoing objections,
2 please see attached documents labeled KELLOGG 56979 – 57287.

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6 **REQUEST FOR PRODUCTION NO. 19:** Produce records showing the wages and
7 withholdings for Tracy Aynes from the start of her employment through the date of her
8 termination.

9 **RESPONSE:** Documents sufficient to respond to RFP No. 19 are labeled KELLOGG
10 00396 to 00403.

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12
13 **REQUEST FOR PRODUCTION NO. 20:** Produce W-2 forms for Tracy Aynes for
14 every year of her employment.

15 **RESPONSE:** See documents labeled KELLOGG 00404 to 00407.

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17
18 **REQUEST FOR PRODUCTION NO. 21:** Produce a report or summary of total
19 benefits paid to Tracy Aynes for the last full year of her employment.

20 **RESPONSE:** Defendants will supplement this response.

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23 **INTERROGATORY NO. 10:** Identify each person from whom written and signed (or
24 otherwise adopted or approved) recorded or transcribed statements or reports have been secured
25 related to any of the allegations in your Complaint or Defendant's Answer.

26 **DEF'S FIFTH SUPP RESP TO PLTF'S FIRST SET OF DISCOVERY
REQUESTS**

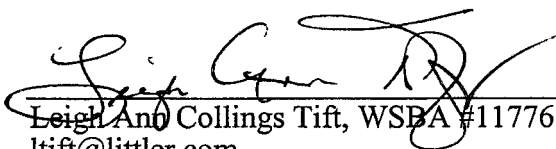
CASE NO. C07-05623 RBL
FIRMWIDE:86671696.1 047719.1009

1 **ANSWER:** Defendant objects that this request for production is vague, ambiguous and
2 overbroad. Without waiving such objection, defendant states that it has not yet gathered any
3 written statements or reports. This Interrogatory answer will be supplemented.

4
5
6 **REQUEST FOR PRODUCTION NO. 22:** Produce any and all documents and/or
7 tangible items that evidence any of the statements or reports that you are asked to identify in the
8 prior interrogatory.

9 **RESPONSE:** *See*, Answer to Interrogatory No. 3. This Response will be supplemented.

10
11
12 Dated: Sept. 16, 2008

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14 
Leigh Ann Collings Tift, WSBA #11776
ltift@littler.com

15 Joanna Silverstein, WSBA# 38577

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24 Attorneys for Defendant
25 KELLOGG SALES COMPANY

26 **DEF'S FIFTH SUPP RESP TO PLTF'S FIRST SET OF DISCOVERY
REQUESTS**

CASE NO. C07-05623 RBL

FIRMWIDE:86671696.1 047719.1009

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VERIFICATION

STATE OF _____)
COUNTY OF _____) ss.

_____, being first duly sworn on oath, deposes and says:

That s/he is the _____ of the Defendant Kellogg Sales Company; that s/he read the within and foregoing Answers to Plaintiff's First Set of Discovery Requests to Defendant, knows the contents thereof, and believes the same to be true, complete and accurate.

Signed this _____ day of April, 2008, at _____.

SUBSCRIBED AND SWORN to before me this _____ day of April, 2008.

Printed Name: _____

NOTARY PUBLIC in and for the State of Washington,

residing at _____

My commission expires: _____

DEF'S FIFTH SUPP RESP TO PLTF'S FIRST SET OF DISCOVERY REQUESTS

CASE NO. C07-05623 RBL
FIRMWIDE:86671696.1 047719.1009

CERTIFICATE OF SERVICE

I am a resident of the State of Washington, over the age of eighteen years, and not a party to the within action. My business address is Columbia Center, 701 Fifth Avenue, Suite 6500, Seattle, Washington 98104.7097. On September 16, 2008, I served the within documents:

DEFENDANT'S FIFTH SUPPLEMENTAL RESPONSES TO***PLAINTIFF AYNES'S FIRST SET OF DISCOVERY REQUESTS TO DEFENDANT***

- ☐ by facsimile transmission at or about _____ on that date. The transmission was reported as complete and without error. A copy of the transmission report, properly issued by the transmitting machine, is attached. The names and facsimile numbers of the person(s) served are as set forth below.
- ☐ by placing a true copy of the documents(s) listed above for collection and mailing following the firm's ordinary business practice in a sealed envelope with postage thereon fully prepaid for deposit in the United States mail at Seattle, Washington addressed as set forth below.
- ☐ by depositing a true copy of the same enclosed in a sealed envelope, with delivery fees provided for, in an overnight delivery service pick up box or office designated for overnight delivery, and addressed as set forth below.
- ☒ by causing a copy of the document(s) listed above to be personally served to the person(s) at the address(es) set forth below.

Anne-Marie E. Sargent
 Email: aes@cslawfirm.net
 Stephen P. Connor
 Email: spc@cslawfirm.net
 CONNOR & SARGENT PLLC
 1200 Fifth Avenue, Suite 1650
 Seattle, WA 98104
 Telephone: 1-206-654-5050
 Fax: 1-206-624-5469

I am readily familiar with the firm's practice of collecting and processing correspondence for mailing and for shipping via overnight delivery service. Under that practice it would be deposited with the U.S. Postal Service or if an overnight delivery service shipment, deposited in

DEF'S FIFTH SUPP RESP TO PLTF'S FIRST SET OF DISCOVERY REQUESTS

CASE NO. C07-05623 RBL
 FIRMWIDE:86671696.1 047719.1009

1 an overnight delivery service pick-up box or office on the same day with postage or fees thereon
2 fully prepaid in the ordinary course of business.

3 I declare under the penalty of perjury under the laws of the State of Washington that the
4 above is true and correct. Executed on September 16, 2008, at Seattle, Washington.

5 
6 SALLY SWEARINGER

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26 **DEF'S FIFTH SUPP RESP TO PLTF'S FIRST SET OF DISCOVERY
REQUESTS**

CASE NO. C07-05623 RBL
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